

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

UNITED STATES of AMERICA,

Case No: 2:10-00011

JUDGE HAYNES

vs.

YENNIER CAPOTE GONZALEZ /

**MOTION IN LIMINE TO EXCLUDE CONTENTS OF ELECTRONIC  
MESSAGES RETREIVED FROM DEFENDANT'S CELLPHONE PROVIDER**

Comes now the Defendant Yennier Capote Gonzalez through counsel and pursuant to the Fourth Amendment, Sixth Amendment and Rules 401, 402, 403 and 802 of the Federal Rules of Evidence and respectfully asks this Honorable Court to preclude the Government from introducing into evidence the contents of approximately 247 pages of Spanish text messages they intend to introduce in their case in chief. In support the undersigned would show as follows:

1. The Government has provided counsel with a copy of approximately 247 pages of electronic text messages obtained via a subpoena of the Defendant's cellphone records. The electronic messages were sent or received within a range of dates contemporaneous with the dates of the alleged scheme to defraud. Some of the texts would be considered incriminating and thereby prejudicial, while many of the texts have no relevance to the alleged fraud.

2. Regarding the constitutional grounds for exclusion the undersigned would aver the contents of a text message are akin to a telephone conversation or mail in the possession of the postal service. They would be subject to a reasonable expectation of privacy. Warshak v. United States, 532 F.3d 521 (6th Cir. 2008) Katz v. United States,

*Over*  
*This motion*  
*is DENIED for*  
*lack of stated*  
*injury*  
*caused*  
*10/31/12*